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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,543	12/27/2000	Heikki Heikkila	14007	8973
75	90 10/02/2002			
Leopold Press		EXAMINER		
Scully Scott Mu 400 Garden City	/ Plaza	WONG, LESLIE A		
Garden City, N	Y 11530		ART UNIT	PAPER NUMBER
			1761	а
			DATE MAILED: 10/02/2002	9

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. 09/674,543 Office Action Summary

Applicant(s)

Heikkila et al.

Examiner

Leslie Wong

Art Unit 1761



	The MAILING DATE of this communication appears	on the co	ver sh	eet with	the correspondence address	
	for Reply					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. • Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the						
- If the p - If NO p - Failure - Arry re	In date of this communication. beriod for reply specified above is less than thirty (30) days, a reply within the beriod for reply is specified above, the maximum statutory period will apply as to reply within the set or extended period for reply will, by statute, cause the ply received by the Office later than three months after the mailing date of the patent term adjustment. See 37 CFR 1.704(b).	nd will expir ne application	e SIX (6) n to beco	MONTHS fi me ABAND(rom the mailing date of this communication. ONED (35 U.S.C. § 133).	
Status						
1) 💢	Responsive to communication(s) filed on Jul 1, 200	02	-		·	
2a) 💢	This action is FINAL . 2b) ☐ This action	ion is no	n-final	l .		
3) 🗆	3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.					
Disposi	tion of Claims					
4) 💢	Claim(s) 1-30 and 35-56				is/are pending in the application.	
4	a) Of the above, claim(s)		_		is/are withdrawn from consideration.	
_	Claim(s)					
6) 💢	Claim(s) 1-30 and 35-56				•	
7) 🗆	Claim(s)				is/are objected to.	
8) 🗆	Claims		are	subject	to restriction and/or election requirement.	
Applica	ntion Papers					
9) 🗆	The specification is objected to by the Examiner.					
10)	The drawing(s) filed on is/are	a) 🗆 a	ccepte	ed or b)[objected to by the Examiner.	
	Applicant may not request that any objection to the d	lrawing(s)) be he	ıld in abe	yance. See 37 CFR 1.85(a).	
11)	The proposed drawing correction filed on		is	: a) □ a	approved b) \square disapproved by the Examiner.	
	If approved, corrected drawings are required in reply t	to this Of	ffice ac	tion.		
12)	The oath or declaration is objected to by the Exami	iner.				
Priority under 35 U.S.C. §§ 119 and 120						
13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).						
a) □ All b) □ Some* c) □ None of:						
	1. \square Certified copies of the priority documents have	e been r	eceive	ed.		
	2. Certified copies of the priority documents have	e been r	eceive	ed in App	olication No	
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).						
_	ee the attached detailed Office action for a list of the					
14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).						
a) U The translation of the foreign language provisional application has been received.						
15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.						
Attachm	ent(s) otice of References Cited (PTO-892)	41	arviaw S.	emman, (DT/	0-413) Paper No(s).	
	otice of Draftsperson's Patent Drawing Review (PTO-948)	_			nt Application (PTO-152)	
-	formation Disclosure Statement(s) (PTO-1449) Paper No(s).	6) Oth				

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23-30, 35-39, and 46-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Dogliotti, Darsow, and DuRoss for the reasons set forth in rejecting the claims in the last office action (Paper No. 7). The amendments to the claims and the new claims are not seen to influence the conclusion of unpatentability previously set forth.

Applicant's arguments filed July 1, 2002 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not teach the claimed process where the microcrystals are formed by suspension crystallization, and that the claimed particulate crystalline xylitol consists of microcrystals of xylitol throughout its entire structure.

Dogliotti, Darsow, and DuRoss all teach crystalline xylitol and products containing crystalline xylitol (see entire corresponding patents).

Claims 23-30, 35-39, and 46-56 are product claims. It is not seen how the claimed product differs from that of the prior art. The prior art clearly teaches crystalline xylitol and products containing xylitol. Applicant's claimed product does not distinguish over that of the prior art.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-22 and 40-45 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DuRoss for the reasons set forth in rejecting the claims in the last office action (Paper No. 7). The amendments to the claims and the new claims are not seen to influence the conclusion of unpatentability previously set forth.

Applicant's arguments filed July 1, 2002 have been fully considered but they are not persuasive.

Applicant argues that the claimed invention is directed to a suspension crystallization where the xylitol crystallizes below its melting temperature to obtain a very homogeneous crystalline product.

DuRoss teaches crystalline xylitol and products containing, wherein the crystalline xylitol is prepared by contacting a xylitol melt with finely ground xylitol seed crystals (see entire patent, especially Example 1). The final product of DuRoss is a solid and may be ground down (see Examples 2-5). A drying step would be inherent and/or obvious to that of DuRoss as a solid crystallized xylitol is obtained.

It is not seen where the claimed invention differs from that of the prior art. The claims do not exclude the teachings of that of DuRoss.

All of the claim limitations and arguments have been considered. None of them are seen as serving as basis for patentability.

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No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can normally be reached on Tuesday-Friday.

The fax number for this Group is (703) 872-9310 for non-final responses and (703) 872-9311 for after-final responses.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Leslie Wong Primary Examiner

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LAW October 1, 2002